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INSURANCE — PROVISION FOR PROTECTION AGAINST THEFT — SCOPE

A "buyer" obtained the plaintiff's automobile from the plaintiff by giving him a forged check in payment. The plaintiff brought suit against the defendant insurance company on a policy which covered loss of his automobile through "theft." *Held*: such a transaction is not within the risk insured against by the company.¹

There is a considerable split of authority on whether obtaining property by false pretenses constitutes "theft" under a theft clause in an insurance policy.² Some courts which hold that it does base their decisions on the ground that, in general, the term "theft" is not confined to common law larceny, but includes obtaining property by false pretenses.³ Some courts reach the same result by holding that it is doubtful whether or not "theft" includes obtaining by false pretenses, and that the doubt should be resolved in favor of the insured because of the generally accepted doctrine that when an insurance policy is open to different constructions, that most favorable to the insured will be adopted, inasmuch as the language of the policy was chosen by the insurer.⁴ This seems a proper view.

Some courts, on the other hand, regard "theft" as "essentially synonymous" with common law larceny and hence deny recovery to the insured under a theft clause in a policy when the property has been obtained from him under false pretenses.⁵ The Ohio Supreme Court followed this view in a case decided before passage of the present Ohio larceny by trick statute. The court asserted that to interpret "theft" as including obtaining by false pretenses might lead to instances where the seller would make little effort to determine whether representations made to him by a pro-

¹Cox v. World Fire and Marine Ins. Co., 239 S.W.2d 538 (Mo. 1951). See Generally 5 APPLEMAN, INSURANCE LAW AND PRACTICE Sec. 3213 (1941); 6 BLASHFIELD'S CYCLOPEDIA OF AUTOMOBILE LAW AND PRACTICE Sec. 3712 (Perm. Ed. 1945); 5 COUCH, CYCLOPEDIA OF INSURANCE LAW Sec. 1176a (1931); 27 N.C.L. REV. 371 (1949); 17 ORE. L. REV. 345 (1938)

²See Note 152 A.L.R. 1100 (1944). For various judicial constructions of the term "theft," see 41 WORDS AND PHRASES 473 (Perm. Ed. 1940).

³Pennsylvania Indemnity Fire Corp. v. Aldridge, 117 F.2d 774 (D.C. Cir. 1941); Overland-Reno Co. v. International Indemnity Co., 111 Kan. 668, 208 Pac. 548 (1922); Motor Co. v. Insurance Co., 111 Kan. 225, 207 Pac. 205 (1922); cf. James v. Phoenix Assur. Co., 75 Colo. 209, 225 Pac. 213 (1924); Fidelity and Casualty Co. of New York v. Walthen, 205 Ky. 511, 266 S.W. 4 (1924); Champion v. Chicago Fire and Marine Ins. Co., 104 N.J.L. 554, 141 Atl. 794 (1928); Toms v. Hartford Fire Ins. Co., 146 Ohio St. 39, 63 N.E. 2d 909 (1945); Nugent v. Union Automobile Ins. Co., 140 Ore. 61, 13 P. 2d 343 (1932). But cf. Royal Ins. Co. v. Jack, 113 Ohio St. 153, 148 N.E. 923 (1925).

⁴Aschenbrenner v. U.S. Fidelity and Guaranty Co., 292 U.S. 80, 54 S. Ct. 590 (1933); Granger v. New Jersey Ins. Co. 108 Cal. App. 290, 291 Pac. 698 (1930) cf. James et al. v. Phoenix Assur. Co., 75 Colo. 209, 225 Pac. 213 (1924).

⁵Illinois Automobile Ins. Exch. v. Southern Motor Sales Co., 207 Ala. 265, 92 So. 429 (1922); State v. Rapsey, 115 Conn. 540, 162 Atl. 262 (1932); Cedar Rapids